Filed 10/5/10 In re J.C. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re J.C., a Person Coming Under the Juvenile Court Law.	
ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. C.T. et al., Defendants and Appellants.	A127946 (Alameda County Super. Ct. No. OJ08010395)

Appellants H.C. and C.T. are the father and mother, respectively, of three-year-old J.C., a dependent child of the juvenile court. After appellants failed to reunify with J.C., the court found the child was likely to be adopted and terminated appellants' parental rights. Appellants contend there was insufficient evidence to support the juvenile court's finding of adoptability. We disagree and affirm.

I. FACTS

On July 16, 2008, respondent Alameda County Social Services Agency (Agency) filed a dependency petition alleging failure to protect and sibling abuse. (Welf. & Inst. Code, § 300, subds. (b) & (j).)[1] According to the petition, 16-month-old J.C. ingested the

[1] Subsequent statutory citations are to the Welfare and Institutions Code. Subsequent dates are in 2008 unless and until otherwise indicated.

entire contents of Mother's prescription bottle of Klonopin, nine and one-half tablets, on July 14. J.C. was hospitalized for at least two days for treatment as a result of the overdose. Appellants failed to adequately secure the medication from J.C. Father inadequately supervised J.C. because he was in the room when the child ingested the medication. Father is diagnosed with depression for which he has not obtained adequate treatment. His symptoms include excessive sleep and inattentiveness which contribute to his inability to supervise J.C. Mother is diagnosed with bipolar disorder and anxiety, and has not followed through with treatment.

The petition further alleged that Mother had shown repeated insufficient attention to J.C. on several occasions. On one occasion, she took J.C. outside with her while she took out the garbage, and forgot to bring J.C. back inside the house. Appellants did not come looking for the child for several minutes. J.C.'s paternal aunt (Aunt) found the toddler by the garbage cans. On another occasion Mother gave J.C. lettuce to eat, which caused the child to choke and stop breathing. The Aunt intervened and saved the child. Finally, the Aunt had cautioned Mother on several occasions regarding leaving medication within reach of J.C.

The petition also alleged that J.C.'s two older siblings were dependent children due to appellants' neglect.

The incidents alleged in the petition occurred when appellants were living with the Aunt, who had allowed appellants to convert her garage to living quarters for the sake of the child. Appellants had been homeless and the Aunt did not want J.C. to live in a series of homeless shelters. When J.C. was discharged from the hospital, she was placed with the Aunt who continued to care for her. The aunt had been living in the Bay Area for a year and a half, having relocated from Boston.

In its jurisdiction/disposition report, the Agency recommended that J.C. be made a dependent child and appellants be offered reunification services. Mother agreed with this recommendation. Father's position was unknown. The Agency reported: "Both the mother and the father have mental health problems. They are both recovering drug addicts and they have a history of domestic violence. Neither the mother nor the father

have a history of being able to adequately and appropriately parent their children. Although they have addressed some of their problems that interfere with their ability to parent, they continue to struggle with providing adequate supervision and parenting." "Without [appellants] participating and showing progress in services, it is not safe for [J.C.] to be left in the care of her parents at this time."

The court held a jurisdictional hearing on September 15. Mother was present, but Father waived his appearance. Mother submitted the issue of jurisdiction on the Agency reports. The court sustained the dependency petition and ordered reunification services for both parents.

At the 90-day interim review hearing on December 15, the court followed the Agency's recommendation that reunification services continue until the six-month review hearing. Appellants "are in agreement with this recommendation." The Agency reported that appellants "expressed that they have learned from [their] mistakes," but "the question remains unclear . . . whether or not they are able to safely parent [J.C.] at this time." J.C. remained placed with the Aunt.

In its six-month review report, the Agency recommended that reunification services continue until the 12-month permanency planning hearing. Mother agreed with this recommendation. Father disagreed and wanted J.C. returned to his custody. J.C. remained in the care of the Aunt.

The report noted that Mother had not found stable housing and was living in Albany with friends. Father was homeless and living at various shelters in Oakland and Berkeley. Appellants were in only partial compliance with their reunification services case plans. Appellants "have not fully addressed their mental health challenges as they have had inconsistent participation in the mental health services. . . . It seems as though the parents fail to realize the connection between their mental health challenges and their ability to provide adequate supervision and protection for [J.C.]."

J.C. had developed an emotional attachment to the Aunt and was "thriving" in her care. J.C. had also bonded with her three-year-old cousin. The Aunt told the Agency she

was willing to adopt J.C. if reunification failed. An adoption assessment prepared January 29, 2009 found J.C. to be adoptable.[2]

At the six-month review hearing on February 24, the juvenile court found appellants to be in partial compliance with their case plans, continued reunification services, and set a 12-month review hearing for August 10.

In its 12-month review report, the Agency recommended that reunification services be terminated and a hearing be set under section 366.26 (.26 hearing) to establish a permanent plan of adoption with the Aunt. Mother disagreed with this recommendation. Father's position was unknown.

Mother had been homeless prior to moving in with J.C.'s maternal grandmother in Sacramento in May. She admitted to a long history of crack cocaine addiction and had relapsed and began to use cocaine again. Father was incarcerated for cocaine possession and was out of contact with the social worker. Mother was in partial compliance with her reunification plan, while Father was in minimal compliance.

J.C. continued to adjust well to her placement with the Aunt. She had seen less of her parents, had only asked about Father, and had healthy eating and sleeping habits. The Aunt was still willing to adopt. J.C. A second adoption assessment, conducted July 29, found J.C. was adoptable "and that adoption with the [Aunt] is the Agency's proposed plan."

The 12-month review hearing was held September 2. The juvenile court terminated reunification services and directed the Agency to prepare an adoption assessment pursuant to section 366.2, subdivision (1). The court set a .26 hearing for December 10.

On October 27, the Agency filed a supplemental petition (§ 387) recommending a modification of the previous order placing J.C. with the Aunt. The Agency reported that the Aunt could no longer care for J.C. and was moving back to Boston. The Agency had moved J.C. to a foster home on October 23. The Agency requested that J.C. be formally

[2] Subsequent dates are in 2009 unless and until otherwise indicated.

removed from her placement with the aunt and judicially placed in foster care "until appropriateness of placement with another relative could be determined." The maternal grandmother in Sacramento had expressed an interest in caring for J.C. The court ordered J.C. removed from the aunt's home and temporarily placed with the Agency.

On November 13, the Agency submitted another jurisdiction/disposition report recommending that the .26 hearing on December 10 "be maintained in proposing the permanent plan of adoption with an approved relative or caregiver." J.C. was still living in the foster home. J.C. appeared to be adjusting well to the new placement, and the Aunt "has been in telephone contact with the foster parent and they have formed an alliance and support system on [J.C.'s] behalf." Appellants were gaining insight into the reasons for the Agency intervention into their family, but "continue to struggle with providing adequate supervision and parenting." They "are open" to J.C. remaining with the foster parent.

The Agency described J.C. as "thriving" in her new placement with the foster parent, and recommended that reunification with her parents would be detrimental. The Agency noted that even if the foster parent adopted J.C., she would still be able to maintain a relationship and visitation with appellants.

A week before the .26 hearing, the Agency requested a 90-day continuance to give it "the opportunity to further evaluate all placement and permanency options for [J.C.]." The maternal grandmother's home had not yet been approved for placement, and the grandmother had been unable to secure "a safe childcare arrangement" for J.C.

At the December 10 hearing, J.C.'s counsel agreed with the requested continuance, noting that J.C. "has had a recent enormous upheaval in her life" given the Aunt's decision to move back to Boston. Counsel noted that J.C. was "in a really wonderful foster home," and asked that J.C. remain there. The court continued the .26 hearing to March 4, 2010.[3]

[3] Subsequent dates are in 2010 unless and until otherwise indicated.

In its report prepared for the .26 hearing, the Agency recommended that the court terminate parental rights so that J.C., now three years old, could be adopted. Appellants "would prefer to reunify with [J.C., but] are open to a plan of adoption with a family member. They are opposed to adoption by a non family member." The foster parent wanted to adopt J.C. and had been meeting her needs for the past four months. J.C. got along well with the foster parent's 11-year-old daughter. J.C. "has never lived with her siblings and does not have significant sibling relationships with them." She "has lived away from her parents for one half of her life. They do not provide her with the physical and emotional security and nurturance that she needs. [J.C.'s] current caretaker can and does provide for her needs."

A permanency planning/adoption assessment conducted December 1, 2009 found that J.C. was adoptable and was likely to be adopted.

Neither Mother nor Father personally appeared for the .26 hearing. All sides submitted on the reports. The maternal grandmother appeared and expressed concerns about the proposed plan, including her belief that J.C. should not be separated from her siblings. She suggested that J.C. was not happy and "doesn't like where she is no matter what the psychiatrist . . . says." She suggested she could care for J.C.

J.C.'s counsel referred to the Aunt's abrupt decision to leave for Boston, but observed that "[f]ortunately for [J.C.] and all of us, I think, the foster placement where she was placed turned out to be a lovely home with a very sensitive caregiver who adores the child." Counsel continued:

"[J.C.] is healing from the trauma of being abandoned by her long-term caregiver [the Aunt] and needs to move on in her life. This caregiver [the foster parent] is willing and very much wanting to provide permanence for this child. I don't believe she will cut the family off. She has contact with the family and I believe she understands that [J.C.] will always know who her family is and she will maintain her connection to the family."

The juvenile court found by clear and convincing evidence that it is likely J.C. would be adopted. The court then terminated appellants' parental rights.

II. DISCUSSION

Appellants contend the evidence is insufficient to support the juvenile court's adoptability finding. We disagree because the finding is supported by substantial evidence.

We review the record to determine whether there is substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that it is likely that the child will be adopted. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) In reviewing the sufficiency of the evidence, "we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. [Citations.]" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)[4]

The adoptability issue presented at a .26 hearing "focuses on the *minor*, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor. [Citations.] Hence, it is not necessary that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.' [Citations.]" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) "Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family*. [Citation.]" (*Id.* at pp. 1649−1650.)

Three separate adoption assessments found J.C. to be adoptable. The record shows that J.C is very young, is in good physical health, enjoys normal development, and is in good emotional health. There are some indications of crying and temper tantrums,

[4] Appellants seem to suggest that there is a higher standard of appellate review when the trial court's evidentiary standard is clear and convincing evidence. That is not correct. (See *In re J. I.* (2003) 108 Cal.App.4th 903, 911; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580−581.)

but this is normal for a three-year-old and some such incidents are linked to the separation from the Aunt. J.C.'s emotional reaction to that separation subsided when J.C. became comfortable with her new foster parent. Moreover, the foster parent is very willing to adopt J.C.

Appellants contend the Agency's .26 report provided inadequate information about the foster parent. But appellants did not object to the report or to its purported insufficient information. Indeed, they did not even appear at the .26 hearing.

The evidence, which we cannot and will not reweigh, is more than substantial to support the juvenile court's determination that J.C. is adoptable. We note that the juvenile court was faced with a child who had not lived with her parents for half of her life, whose caregiver abruptly moved away, and who was thriving in a new foster home with a loving foster parent who wanted to adopt her. Given the evidence of adoptability and all the circumstances of this case, the juvenile court's ruling was eminently sound and in the best interests of J.C.

III. DISPOSITION

The order terminating parental rights is affirmed.

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Marchiano, P.J.

We concur:

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Margulies, J.

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Banke, J.